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No. 85-1432

In The
Supreme Court of the United States
October Term, 1985

JAMES R. DAVIS,

Petitioner,

v.

CITY OF ROSWELL, GEORGIA
and T. L. JOYNER,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE SUPREME COURT OF GEORGIA PROPERLY FOLLOWED, *MONELL vs. NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES*, 436 U. S. 658 (1978) AND *CITY OF OKLAHOMA vs. TUTTLE*, — U.S. —, 105 S. Ct. 2427 (1985) WHEN IT HELD, ON NUMEROUS GROUNDS, THAT THE PETITIONER DID NOT PRESENT ANY EVIDENCE AT TRIAL TO ESTABLISH A CAUSE OF ACTION UNDER 42 U.S.C. § 1983.

TABLE OF CONTENTS

Pages

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 4

ARGUMENT 4

CONCLUSION 8

APPENDIX A-1

TABLE OF AUTHORITIES

Pages

CASES:

Brewer v. Blackwell, 692 F.2d 387 (5th Cir. 1984) 3

City of Oklahoma v. Tuttle, — U.S. —, 105 S. Ct. 2427 (1985) 4, 5, 6, 7

Dominguez v. Beame, 603 F.2d 337 (2nd Cir. 1979) 3

Monell v. New York City Department of Social Services, 436 U.S. 658 (1978) 2, 4, 7, 8

STATUTES:

42 U.S.C. § 1983 ..... 4, 6, 7

Respondents City of Roswell, Georgia and T. L. Joyner respectfully oppose the Petition for a Writ of Certiorari to the Supreme Court of Georgia on the grounds that the Supreme Court of Georgia properly construed and applied decisions of this Court which are dispositive of the issues raised by the Petitioner.

STATEMENT OF THE CASE

On May 24, 1980, Michael Douglas Ramey, a City of Roswell police officer, stopped the respondent and his wife while they were on the way to the hospital. Officer Ramey stopped the respondent because of his "erratic driving". (A-9, 10). Officer Ramey testified that at one point the respondent's vehicle crossed the centerline and he was forced to leave the roadway in order to avoid a collision. (A-12, 13). The petitioner denied that he was driving erratically, but admitted that his vehicle "swayed" at the point that it met Officer Ramey's vehicle on the roadway. (A-1, 2).

After the stop, Officer Ramey refused to allow the petitioner to proceed on to the hospital since the petitioner was not "capable of making it to the hospital" (A-11, 12) and the respondent's wife was in immediate need of "emergency medical services or people trained in that area." (A-14). The petitioner admitted that his wife was very sick (A-2, 3) and that he was "emotional and very upset" when he was stopped by Officer Ramey. (A-3).

It is undisputed that the emergency medical technicians called by Officer Ramey were at the scene within

minutes of the stop. (A-22, 23). They found the petitioner's wife to be "blue in color, caused by lack of oxygen" and could not obtain a blood pressure. (A-4, 5). They immediately began rendering medical assistance to her.

It is unknown exactly how much time elapsed before the petitioner's wife was taken to the hospital, but the ambulance which transported her arrived at the hospital (which was approximately 8.2 miles away) approximately 29 minutes after the petitioner's vehicle was first stopped by Officer Ramey. (A-22, 24).

The crucial issue before this Court on the Petition for Certiorari is whether the respondents had a custom or policy which caused Officer Ramey's actions. *Monell v. New York City Department of Social Services,* 436 U.S. 658 (1978). The following evidence bears directly on that issue.

Officer Ramey testified that he was unaware of any custom or policy which directed his handling of the above-stated incident.[1] Further, none of the witnesses who testified at trial stated that the City of Roswell had any such policy or custom.[2] Respondent Joyner affirmatively testi-

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1 Officer Ramey testified: Q. To your knowledge, in May of 19 and 80 did Roswell have any policy of how to handle such a situation? A. To my knowledge, they did not. (A-8). Q. The question, Mr. Ramey, was: Did somebody with the Roswell Police Department, one of your supervisors, tell you that that is the accepted thing that you were supposed to do, is call the Roswell Volunteer Emergency Rescue Squad? A. No, sir. (A-14).

2 The petitioner contends that the testimony of John Watson established such a policy or custom. That contention is not,

(Continued on following page)

fied that no such policy or custom existed and that it was within the officer's "discretion as to how to handle that type of situation." (A-20).

Moreover, the petitioner did not produce any evidence at trial to show that other, similar incidents had ever taken place in the City of Roswell. In fact, the only testimony on that subject was by respondent Joyner, who testified that he had never had a similar incident brought to his attention. (A-20).

On the date of the incident, Officer Ramey had been employed by the City of Roswell Police Department for approximately two months. His training with that police department consisted of three weeks of on-the-job training, however, the record shows that he had previously been trained and employed by the Forsyth County Sheriff's Department as a Deputy Sheriff (A-7, 8) and that he had received first aid training at a technical school and in the Army. (A-6, 7). Further, the unrefuted testi-

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(Continued from previous page)

however supported by the record. A review of Watson's testimony shows that he absolutely denied that any such policy or custom existed: Q. Captain Watson, in view of your testimony, I am foggy as to what the custom is. I understand it's the custom in the City of Roswell, when you find someone sick or injured you call for an ambulance; is that correct? A. Yes, sir; if their injury warrants being transferred to a medical facility. Q. Under the particular facts that Officer Ramey found on the morning of the 24th, his dealing with that situation, there is no set policy in the City of Roswell in that regard, is there? A. No, sir. Q. That was left to his discretion, wasn't it? A. Yes, sir. (A-18). Furthermore, even if Watson had testified that it was *his* understanding that such a policy or custom existed, that would not have been sufficient to establish that *the respondents* had enacted, authorized or had knowledge of any such policy or custom. *See, e.g., Dominguez v. Beame,* 603 F.2d 337 (2nd Cir. 1979) and *Brewer v. Blackwell,* 692 F.2d 387 (5th Cir. 1982).

mony of respondent Joyner was that it was the policy of the City of Roswell Police Department to comply with all of the State of Georgia's requirements regarding police officer qualifications and training. (A-18, 19).

SUMMARY OF ARGUMENT

The Supreme Court of Georgia, in a lengthy and well-reasoned opinion, held that the petitioner failed to present any evidence at trial to establish a cause of action under 42 U.S.C. § 1983. Accordingly, the Petition for Writ of Certiorari must be denied.

ARGUMENT

A recent decision by this Court, *City of Oklahoma v. Tuttle,* — U.S. —, 105 S.Ct. 2427 (1985) (hereinafter "*Tuttle*"), is dispositive of all issues raised by the petitioner. In that case, this Court granted certiorari to consider the question: "Whether a single isolated incident of the use of excessive force by a police officer establishes an official policy or practice of a municipality sufficient to render the municipality liable for damages under 42 U.S.C. § 1983." *Tuttle,* 105 S.Ct. at 2431 n. 2.

After recognizing the split in the United States Courts of Appeals and reviewing its previous decisions regarding municipal liability under § 1983, notably *Monell v. New York City Department of Social Services,* 436 U.S. 658 (1978) (hereinafter "*Monell*"), this Court reaffirmed its holding that a municipality may not be held liable under

a *respondeat superior* theory (or solely because it employs a tortfeasor), stating: "*Monell* teaches that the city may only be held accountable if the deprivation was the result of a municipal 'custom or policy.' " *Tuttle,* 105 S. Ct. at 2433. This Court then considered whether proof of a single, isolated incident, without more, is sufficient to establish a municipal "custom or policy" and held that it was *not:*

> Proof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell,* unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker. Otherwise the existence of the unconstitutional policy, and its origin, must be separately proved. But where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality, and the causal connection between the "policy" and the constitutional deprivation. *Id.* 105 S. Ct. at 2436.

In the case *sub judice,* the evidence established a single, isolated incident involving one of the respondents' police officers. It entirely failed, however, to establish any other incident or that the respondents had adopted or ratified, in any manner, a "custom or policy" which authorized or approved the officer's actions. Thus, the petitioner's argument that the incident proved at trial, without more, is sufficient to establish a "custom or policy" must fail: It is insufficient as a matter of law to prove that any of the alleged "inadequacies resulted from conscious choice—that is, . . . that the policymakers de-

liberately chose a training program which would prove inadequate." *Tuttle,* 105 S. Ct. at 2436.[3]

Moreover, even if a "custom or policy" of improper training had been proved by the petitioner, there was no evidence presented at trial that such a policy "caused" the complained of incident. Other than the petitioner, none of the witnesses who testified at trial stated that Officer Ramey should have acted any differently than he did. The other police officers who testified at trial, both of whom had been through the police officer training course mandated by the State, testified that Ramey behaved properly under the circumstances. (A-16, 17, 20, 21). There were no witnesses presented by petitioner to counter that testimony or to establish that further or other training could have improved the manner in which Officer Ramey handled what obviously was a very difficult situation. This failure to establish "an affirmative link between the policy and the particular constitutional violation alleged" further bars the petitioner's § 1983 claim. *Tuttle,* 105 S. Ct. at 2436.

The petitioner alleges, *inter alia,* that the respondents had a "policy" that the respondents' police officers were to call for an ambulance when they encountered an ill or injured person and a "policy" that police vehicles were not to be used to transport ill or injured persons; however, there was no evidence presented to show that these "policies" could be "attributed to a municipal policymaker."

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[3] In fact, as stated previously, the undisputed evidence was that the respondents had a policy of complying with all of the State of Georgia qualification and training requirements for police officers.

Tuttle, 105 S. Ct. at 2436. Furthermore, there was no evidence of an "affirmative link" between these policies and the alleged constitutional deprivation. *Id.* Instead, these "policies" amount to nothing more than harmless rules and regulations regulating the respondents' police force which, under *Tuttle,* are insufficient to support a § 1983 claim:

> [S]ome limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional, or the test set out in *Monell* will become a dead letter. Obviously, if one retreats far enough from a constitutional violation some municipal "policy" can be identified behind almost any such harm inflicted by a municipal official; for example, (the police officer) would never have killed respondent's husband) if Oklahoma City did not have a "policy" of establishing a police force. But *Monell* must be taken to require proof of a city policy different in kind from this latter example before a claim can be sent to a jury on a theory that a particular violation was "caused" by the municipal "policy." At the very least there must be an affirmative link between the policy and the particular constitutional violation alleged.

Finally, the petitioner argues that the Supreme Court of Georgia ignored his "primary theories of recovery [which were Officer Ramey's] . . . stop and detention of petitioner without probable cause . . . and interference with petitioner's efforts to secure immediate medical treatment . . . for his elderly wife . . ." (Petitioner's Brief, pages 9-10). That argument reflects the petitioner's very basic misunderstanding of what constitutes a cause of action under 42 U.S.C. § 1983. As interpreted and applied in *Monell* and *Tuttle,* 42 U.S.C. § 1983 only provides re-

lief when "the action that is alleged to be unconstitutional implements or executes a policy, statement, ordinance, regulation, or decision *officially adopted and promulgated by the body's officers . . .*" *Monell, supra* at 690-691 (emphasis added). Clearly, the petitioner's "primary theories" do not meet that standard.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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APPENDIX

(p. 11) Q. Was the car in good operating condition?

A. Yes sir, as good as the average car.

Q. Was there anything unusual about the car that had been custom designed, or anything like that, to make it look like it might be a speed car or something?

A. No, sir.

Q. I interrupted your testimony. I believe you and Jean had put her in the car. Front or back seat?

A. In the back seat.

Q. And where did Miss Abt get?

A. She got in the back seat with her.

Q. Did you drive?

A. Yes, sir.

Q. If you would, describe the trip.

A. Well, I came out from my house and it's about seven-tenths of a mile up to where you make a turn on another road. I was on Nesbitt Ferry, turned on Scott and went down to Holcomb Bridge. And I went down Holcomb Bridge about a mile and I met Officer Ramey, and right where I met him the road was rough and the wagon swayed. Right above where I met him a Volkswagen bus pulled out in front of me and I followed him to the top of the hill and he turned in at a Seven Eleven store, and I pulled across—the street was open, the street was wide and no traffic coming and I pulled across the road and went round him and went on. And I got out at the intersection, just (p. 12) fixing to cross the road, and Mrs. Abt told me,

said: Mr. Davis, they are going to turn on the light on you. And he did, and I turned left onto the ramp and I stopped and got out and went back and asked the officer to lead me on in to St. Joseph's Hospital.

MR. WEBB: Excuse me, Your Honor. I object to the witness just talking. I ask that he be asked questions and he give answers. That's the rule and I would ask that the procedure be followed.

THE COURT: I forgot what the question was, Mr. Webb. There seemed to be a leak in there. Mr. Witness, just answer the question. Don't go into a dissertation that don't involve answers to this question. I'm not saying you did this in this case, but that's not the proper way to do it.

MR. HARDWICK: I had asked him to describe his trip and I believe that is what he was doing.

(Plaintiff's Exhibit 2 was marked for identification by the court reporter.)

BY MR. HARDWICK:

Q. Roy, I hand you what has been marked plaintiff's Exhibit 2 and ask you if you can identify this?

A. Yes, sir. That is the Holcomb Bridge Road.

Q. Is that the strip of Holcomb Bridge Road you just testified about?

A. Yes, sir.

* * *

(p. 40) I didn't know how critical she was but I knew she was in critical condition.

Q. You told Officer Ramey there at the scene that your wife was in dying condition, didn't you?

A. I may have. I don't remember. But anyway, she was unconscious and I didn't know what was going to—I was just in a hurry to get her to the hospital if I could.

Q. You were very concerned about her health and safety and well being at that point, weren't you?

A. That's right.

Q. She was in terrible shape, wasn't she?

A. That's right.

Q. And you obviously were emotional and very upset, weren't you?

A. Well I was when I got stopped; yes, sir.

Q. After they got her to the hospital, you saw her the first time about 10:00?

A. Yes, sir. They carried her on in emergency and I couldn't go in there.

Q. Was she conscious, virtually, from 10:00 up until the time she died?

A. Yes, sir.

Q. So you were able to be with her from 10:00 in the morning until midnight?

A. Yes, sir.

* * *

(p. 88) Different vehicle and met you?

THE WITNESS: Correct.

BY MR. WEBB:

Q. Did you ever note how long it was after you got there that they got there, especially Spencer?

A. Right after I got the box out, he walked up.

Q. What is the box?

A. The orange blood pressure box we have blood pressure cups and things like that in.

Q. And was Mrs. Davis still in the car at the time you get there?

A. Correct.

Q. And how would you describe the condition she was in how was she lying, so forth?

A. She was in the back of the car laying face down, very lifeless. She was a little cyanotic, if I remember correctly.

Q. What does that mean?

A. Cyanotic. Kind of blue in color, caused by lack of oxygen.

Q. Was there anything about the way she was lying face down that might have contributed to that or lack of oxygen?

A. No, sir. I don't believe so.

Q. Did you fell that was a reasonable way or a good way to have her lying, face down in the seat?

A. No, sir.

* * *

(p. 109) Q. Was it necessary to use it when the truck was already there?

A. No, sir I didn't have to use my stuff because the same stuff was on the rescue truck.

Q. Okay. When you got there Mr. Gresham was getting out of the truck?

A. He had already gotten out of the truck and was getting the first-aid bag out of the back.

Q. And you went immediately to Mrs. Davis?

A. Yes, sir.

Q. Now you have answered questions about embolism and all that—blood clots. Was there any evidence of bleeding on Mrs. Davis?

A. I don't recall.

Q. Do you know what blood clots and embolisms are and do?

A. Yes, sir.

Q. Does that require any bleeding on the outside.

A. No, sir.

Q. Now, when you got her inside the truck, you took her vital signs; is that right?

A. Yes, sir.

Q. Do you happen to remember what you found about them?

A. I recall that we could not obtain a blood pressure, the pulse was very weak, and then respirations were real labored.

Q. And when you don't have any blood pressure, is that as

* * *

(p. 142) from the time of his employment up to the time of the Davis incident.

THE WITNESS: Yes, sir.

BY MR. HARDWICK:

Q. Did they give you any material to study at home, any books, pamphlets, study courses?

A. No, sir.

Q. On the date of the Davis incident, were you a certified law enforcement officer under the laws of the State of Georgia?

A. No, sir; I was not.

Q. Prior to the Davis incident, had you received any type of medical training?

A. Yes, sir. I received sixty hours of basic first aid.

Q. From where, sir?

A. From a course I had taken at Lanier Tech.

Q. What type of training was this?

A. Covered your basic bleeding, it went into how to treat fractures, profuse bleeding, shock, C.P.R.

Q. When did you take this training?

A. I took this training, it was in the spring of 1975.

Q. So, it had been approximately five years prior to the Davis incident; that is correct?

A. Yes, sir.

Q. Did you ever update that first-aid treatment course?

(p. 143) A. It was updated when I was in the militar,.

Q. And when would that be, sir?

A. That would have been in January, 1980. I'm sorry, January of 1979.

Q. Which military branch was that, sir?

A. U.S. Army.

Q. And how long did you stay in the Army?

A. I stayed 84 days.

Q. Was that some sort of reservists six months duty or something?

A. No, sir, it was not.

Q. And why did you stay only 84 days?

A. I was injured during basic training and I was released under a medical discharge.

Q. What was the nature of the injury?

A. We were on maneuvers. I fell and reinjured an old back injury.

Q. Prior to the Roswell Police Department, did you work or had you worked for any police department?

A. Yes, sir. In the fall of 1978 I worked for approximately four months for the Forsyth County Sheriff's Department.

Q. And what was your position there?

A. Deputy sheriff.

Q. Did you receive any special training there?

(p. 144) A. No, sir, I did not; except for the fact of riding with a senior officer, as such, for four weeks.

Q. So, up until the time of the Davis incident, if I understand your testimony, you have never received any formal training or training in police work, law enforcement work or anything of this nature?

A. That's correct.

Q. Did you receive any training from the Roswell Police Department as to what procedures to follow as a police officer, in coming upon an emergency of the type you came upon with Mr. Davis?

A. No, sir.

Q. To your knowledge, in May of 19 and 80 did Roswell have any policy of how to handle such a situation?

A. To my knowledge, they did not.

Q. Did the Roswell Police Department give you any training whatsoever in handling medical problems that you may discover on your patrol or beat?

A. No, sir.

Q. What did they tell you to do if you ran across a problem like that?

A. I was never instructed or I was never told that I would come across a problem like that.

Q. Didn't they tell you anything about how to handle an emergency?

* * *

(p. 149) to me checking Mrs. Davis.

Q. How long, prior to your checking his statement?

A. A matter of seconds.

Q. So, after you checked his statement did you have any reason to believe he was lying to you?

A. As soon as I looked in the back of the car, no, sir; I did not.

Q. Y'all were stopped at the entrance ramp of Georgia Four Hundred; is that correct?

A. On the south-bound ramp; yes, sir.

Q. St. Joseph's Hospital is approximately 8.42 miles south of that; correct?

A. Yes, sir.

Q. And it's all divided expressway until you get right to the end?

A. That's correct.

Q. Early in the morning hours?

A. Yes, sir.

Q. No traffic, by previous testimony?

A. No traffic.

Q. If Mr. Davis had told you he had to get to the hospital and you had verified the condition of his wife, why didn't you let him go to the hospital?

A. Having observed Mr. Davis' erratic driving, I did not feel, having sworn to protect and serve the public, that he was (p. 150) in any condition to continue the trip further.

Q. Then why didn't you offer to make a courtesy run, which is what law enforcement people normally call, to run somebody to the hospital. Why didn't you drive it?

A. Why did I not? I simply don't drive other people's vehicles, sir.

Q. Why didn't you put her in the back of your car? It's a two-seated car, isn't it?

A. That's correct.

Q. Full-sized patrol car?

A. That's correct.

Q. You didn't have anybody in the back seat, did you?

A. No, sir, I did not.

Q. If you felt Mr. Davis couldn't drive and you wouldn't drive his car, why didn't *you put her in your car to* take her?

A. Simply because I did not want to move the patient. Since I had found her in that condition, I did not know exactly her problem or why she appeared to be in the condition she was in. Second of all, my car does not carry life sustaining equipment, such as oxygen, blankets. There was no way to get her in there comfortable.

Q. Well, did Mr. Davis' car contain life supporting sytems?

A. No, sir, it did not.

Q. So it wouldn't have made any difference which car she

* * *

(p. 161) Q. How did you keep close check on Mrs, Davis?

A. By observing her condition. I couldn't tell if it worsened. There was nothing, really, I could do.

Q. Well, did you ever talk to Mr. Davis to ask him what the problem was?

A. No, sir. Mr. Davis was too upset.

Q. You say Mr. Davis was upset. Would you tell us what you mean. What was his mannerisms that made you believe he was upset?

A. He was very loud, boisterous. He kept repeating that someone would pay for his being detained on the side of the road. So, I tried to talk with him about the situation but there was no response.

Q. Mr. Davis was loud and boisterous?

A. Yes.

Q. Was he trying to go? Was he asking you to let him get to the hospital?

A. He never asked, sir. He stated simply: I have got to go to the hospital.

Q. Did you ever tell him he couldn't go?

A. No, sir. I stated that help was on its way.

Q. Did you tell Mr. Davis that you couldn't let him go when you pulled him over and he asked you to let him go to the hospital?

A. I told Mr. Davis that under his—from what I had (p. 162) observed of his driving, that he was in no way, in my judgment, capable of making it to the hospital. He not only had his life in the car but also his wife and that of the third passenger.

Q. Mr. Ramey, did you ever use the words: I can't let you go, or you cannot go?

A. No, sir; I did not use those words.

Q. Did you ever prevent Mr. Davis from getting back in his car?

A. No, sir; I did not.

Q. He made no effort, he didn't ask you at all, could he go?

A. There was no question ever asked could he go. The statement was simply made: I have got to go to the hospital.

Q. And you never once told him he could go?

A. I didn't tell him he could go and I didn't tell him he couldn't go.

Q. If he had got back in the car, what would you have done?

A. I guess I would have stood there.

Q. About how long were you and Mr. Davis on the side of the road, between the time you stopped him and the time the ambulance finally took him on to the hospital?

A. The time records indicate twenty-two minutes.

Q. Which time records are you referring to, sir?

A. Those from the city.

* * *

(p. 168) A. Well, as the Davis vehicle approached my patrol unit, I had no intention of stopping the vehicle at that time. I noticed a vehicle with emergency flashers on which you'll see sometimes on four hundred. As the Davis vehicle approached my patrol unit he crossed the center lane, at which time I had to leave the roadway to keep from colliding with his vehicle.

Q. Well, what did you do, Mr. Ramey?

A. I turned around immediately.

Q. Where did you turn around at?

A. I turned around on the side of the road.

Q. You never got to the intersection itself?

A. No.

Q. And then what happened when you turned around?

A. I proceeded to follow the vehicle.

Q. If you would, tell us how far you followed him?

A. I followed the vehicle from where I had turned around until where I pulled the light, somewhere in this area to the ramp here.

Q. About what speed would you estimate Mr. Davis to be going up this hill?

A. I wouldn't know how fast he was going.

Q. How fast were you going?

A. I was moving at a relatively slow speed, maybe thirty, thirty-five miles an hour.

Q. Well, was Mr. Davis pulling away from you?

* * *

(p. 176) department enroute?

A. I had been advised, not only by my training officer but—my training officer advised me that if we came upon a forty-one-four, which involved injuries, to automatically request a rescue—that someone would be there.

Q. But this wasn't an accident, was it?

A. That's right, but it was still an emergency which needed emergency medical services or people trained in that area.

Q. So then, it's a little bit different than what you testified to a minute ago. If somebody did call you, had you been told by someone with the Roswell Police Department of the procedure in that situation? Is that what you are saying now?

A. It was common knowledge they worked with the police department. They wear beepers, a page comes, they can be paged out from their homes, cars; they carry jump bags.

Q. The question, Mr. Ramey, was: Did somebody with the Roswell Police Department, one of your supervisors, tell you that that is the accepted thing that you were supposed to do, is call the Roswell Volunteer Emergency Rescue Squad?

A. No, sir.

Q. On May 24th, during and before you began your patrol and before you stopped Mr. Davis, did you have any occasion to go by the fire station and see if anybody was on duty?

A. I had noticed some personal vehicles parked there that night, sir, but whether it was occupied by a live, breathing

* * *

(p. 193) A. I remember a lady being there that was later identified as a neighbor and I assumed that was who it was.

Q. Did anybody at any time tell you that Mr. Davis was enroute to the hospital and that was his wife that y'all were treating?

A. It's possible that Officer Ramey told me that when I first arrived. When he advised me that—I think it was Officer Ramey that advised me that she had a heart condition.

Q. Did he advise you that Mr. Davis was enroute to the hospital?

A. I can't recall.

Q. If Mr. Ramey had advised you that she was enroute to the hospital, would that have affected in any way the way that you carried out your duties as supervisor that night?

A. No, sir.

Q. You would not have allowed Mr. Davis to proceed?

A. I was never—that was never a question asked of me, if he could leave.

Q. Sir, you were the supervisor; were you not?

A. Yes, sir.

Q. That means you were the man in charge at the scene?

A. Yes, sir.

Q. Had he asked you, if Mr. Davis had wanted to leave the scene and continue on to the hospital with his wife, would you have let him?

(p. 194) A. More than likely, I would have had him wait until the E.M.T.S. arrived and let him make that decision rather than me.

Q. After the incident was over, did you have occasion to review the incident with Officer Ramey?

A. I don't know if we reviewed it anymore than any casual conversation. I don't recall.

Q. How long had Officer Ramey been assigned to your watch before this incident?

A. I don't know. I don't remember if he—I knew he had been on, on training about three months. I don't know if he came straight to my shift or if he started on another one and then was assigned to mine.

Q. Captain, I'll ask you to assume, unless I indicate otherwise, that Officer Ramey worked for you prior to the Davis incident and up to the Davis incident?

A. Okay.

Q. Was Mr. Ramey assigned to your shift during all this time?

A. Yes, sir.

Q. Did you conduct any training classes or anything like that for Mr. Ramey?

A. I don't recall. I know at one point when Ramey was employed, we had our—when set up an orientation program for new officers and I don't recall the dates of it. It might have been in April, which was prior to this incident.

* * *

(p. 200) wouldn't use our police vehicles to transport patients.

Q. And that policy was in effect at the time of the Davis incident?

A. Yes, sir.

THE COURT: Now, when you say that, are you talking about a policy regarding an emergency situation or just an accommodation to take somebody to the hospital that wants to go? What are you talking about?

THE WITNESS: I'm talking about an emergency situation.

BY MR. HARDWICK:

Q. If, when you arrived on the scene at four hundred a little after 6:00 a. m. Saturday morning. Four hundred staring you in the face and just eight miles down the road is a hospital, if officer Ramey or Mr. Davis or anybody else had told you that Mrs. Davis was critically ill and that her doctor had said get here to St. Joseph's Hospital as soon as possible, would you have put Mrs. Davis in your police cruiser and taken her?

MR. WEBB: Objection to the form of the question. This is his witness and as his witness that's a leading question, and contains facts not in evidence and is otherwise improper in calling for speculation.

THE COURT: Well, I don't know whether the officer can answer the question or not. If he can answer it, I really don't see any objection to his answering it—if he can answer it.

THE WITNESS: No, sir; I would call rescue.

(p. 201) MR. HARDWICK: That's all the question I have of this witness, Your Honor.

MR. WEBB: I have just a couple of questions.

CROSS-EXAMINATION

BY MR. BOYLE:

Q. Captain Watson, in view of your testimony, I am foggy as to what the custom is. I understand it's the custom in the City of Roswell, when you find somebody sick or injured you call for an ambulance; is that correct?

A. Yes, sir; if their injury warrants being transferred to a medical facility.

Q. Under the particular facts that Officer Ramey found on the morning of the 24th, his dealing with that situation, there is no set policy in the City of Roswell in that regard, is there?

A. No, sir.

Q. That was left to his discretion, wasn't it?

A. Yes, sir.

Q. Thank you, Captain.

REDIRECT EXAMINATION

BY MR. HARDWICK:

Q. Just one question, Captain. You said if their injury warrants. Who determines what injury warrants transportation to a hospital or ambulance? I'm sorry. Strike that. You testified you would call an ambulance if the injury warrants it. Who determines if the injury warrants an ambulance?

* * *

(p. 205) Officers to dismissing police officers.

Q. Starting with the employment of police officers, who set the standards and requirements to be a police officer for the City of Roswell while you were chief?

A. The state actually set them.

Q. By state law?

A. Yes, sir.

Q. And what was that state law as far as you were concerned, as far as you understood it?

A. They had to be a certain age, couldn't be convicted of a felony. Had to meet certain physical requirements, as in a certain—pass a certain physical. Within a year of employment. They would have to go through 240 hours of mandate training and become certified.

Q. Did you add any additional requirements to that or is that the basic standards that you operated under, that was the basic state standards?

A. We required officers to take polygraph tests and extensive background checks.

Q. Those with the conditions in 1980?

A. Yes, sir.

Q. And, just so there is no misunderstanding, any time—unless I ask specifically otherwise, when I ask for policy, conditions of training and anything, anything like that, I am asking about specifically 1980, at the time of Mr. Davis'

* * *

(p. 209) A. Well, of course, I use a chain of command and if there were any particular problems that arose on a shift the sergeant at the time, at that time, or the corporal at that time would bring these matters to my attention. This was the only way I had of knowing about them.

Q. Prior to the incident with Mr. Davis, did any of these officers bring to your attention any similar incidents as to Mr. Davis?

A. No, sir.

Q. Did you and your supervisors ever discuss the need for procedures to handle emergencies such as Mr. Davis' procedure or situation?

A. Not at that particular time; no, sir.

Q. Did you have any written policy that you gave the new — officers — to handle emergencies like Mr. Davis's.

A. No, sir; none other than it was just up to their own discretion as to how to handle that type of situation.

Q. After the incident with Mr. Davis, did Mr. Davis or anyone on his behalf ever complain to you about this incident and the activities of your police officers?

A. I didn't quite understand the entire question.

Q. After Mr. Davis' incident, did either Roy Davis or anyone acting on his behalf complain to you about the incident with Mr. Davis?

A. I spoke with Mr. Davis several times on the phone

* * *

(p. 211) document?

A. I don't recall receiving this letter.

Q. Never have seen that letter before today?

A. I don't recall ever seeing it.

Q. And you didn't make any investigation as to the activities of your officers involving Mr. Davis' situation?

Roswell Police Dept.

INCIDENT LOCATION
HWY 400 ER

BUILDING NO. APT. NO.

NATURE OF COMPLAINT
76-4 11

DAY OF WEEK: M T W T F S S — X

COMPLAINANT

PHONE #

COMPLAINANTS ADDRESS

REMARKS
RR 726

☐ WRECKER ☐ AMBULANCE

CLOSE 410412

DISP
ARR
COMP
DISPATCHED 05:25
ARRIVED 05:45
COMPLETED 05:47

CASE NUMBER
80 05 1410

RECEIVED BY
430

HOW RECEIVED
☐ PHONE ☐ PERSON ☐ RADIO ☐ OTHER ☐ TELETYPE

PATROL AREA
S-2

CENSUS TRACT
23

TIME/DATE RECEIVED
5-1 . 4

DISPATCHED BY
430

OFFICER NO.
131

UNIT NO.
A1 D E

BACKUP
133 111 143

STATUS
1 GOA
2 UNF 19
3 NAT
4 MISC. INCIDENT
5 INCIDENT REPORT
6 ACCIDENT REPORT
7 TRAFFIC TICKET
8 TRAFFIC WARNING
9 T.O.T. DETECTIVES

P-6
3/04/64
am

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INCIDENT LOCATION

HBR 400 ER

BUILDING NO. APT. NO.

NATURE OF COMPLAINT

76-4

DAY OF WEEK

M T W T F S S

COMPLAINANT PHONE #

COMPLAINANTS ADDRESS

REMARKS

☐ WRECKER ☐ AMBULANCE

DISP 06:29 DISPATCHED

ARR 06:33 ARRIVED

COMP 06:47 COMPLETED

CASE NUMBER # 300

Roswell Fire Department

RECEIVED BY 430

HOW RECEIVED ☐ PHONE ☐ PERSON ☐ RADIO ☐ OTHER ☐ TELETYPE

PATROL AREA S-2

CENSUS TRACT 23

TIME/DATE RECEIVED 5/24

DISPATCHED BY 430

OFFICER NO. King 1

UNIT NO. (M) D E

BACKUP

STATUS

1 GOA
2 UNF 1/4 Acc
3 NAT
4 MISC. INCIDENT
5 INCIDENT REPORT
6 ACCIDENT REPORT
7 TRAFFIC TICKET
8 TRAFFIC WARNING
9 T.O.T. DETECTIVES

P-9
3/12/84

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